

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 3:95cr03093/LAC

CHARLES SPIGNER,

Defendant.

_____ /

ORDER

Before the Court is Defendant's response to the show cause order issued on July 3, 2008, requiring him to demonstrate excusable neglect or good cause for his failure to file a timely notice of appeal from the Court's April 14, 2008, Order denying his motion for reduction of sentence.

Defendant points to delays which occurred in the filing or processing of his notice of appeal and the two motions that preceded it. However, none of these delays save the notice of appeal from being filed late, even after taking into consideration the mailbox rule and giving Defendant the benefit of the doubt that he indeed placed each pleading into the prison mail system on the date he ascribes on his certificates of service.

Even if one subtracts the period between Defendant's filing of the motion for extension of time to file the motion for reconsideration (April 21, 2008) and the Court's ruling thereon (April 29, 2008), which equals seven days; and the period between Defendant's filing of the motion for reconsideration (May 7, 2008) and the Court's ruling thereon (May 15, 2008), which equals eight days, the total number of days that expired before the notice of appeal was placed in the mail (May 20, 2008) was thirty-six days. Thus, after subtracting the 15 days attributable to the filing of the motions, Defendant's filing of the notice of appeal was clearly beyond the ten day deadline under Fed.R.App.P. 4(b)(1). Moreover, as the Eleventh Circuit held, Defendant's motion for reconsideration did not serve to toll the time period because it was not filed within ten business days of the Order from which he appealed.

Defendant does not otherwise attempt to excuse his failure to timely file. Accordingly, the Court finds Defendant has failed to show excusable neglect or good cause to excuse his late filing of the notice of appeal.

As directed by the Eleventh Circuit, the Clerk is directed to return the file to the Eleventh Circuit for further proceedings.

ORDERED on this 28th day of July, 2008.

s/L. A. Collier
Lacey A. Collier
Senior United States District Judge